



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 35

[EPA-R09-OAR-2016-0120; FRL-9946-59-Region 9]

Clean Air Act Grant: South Coast Air Quality Management District; Opportunity for Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Action; determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The Environmental Protection Agency (EPA) has made a proposed determination that the reduction in expenditures of non-Federal funds for the South Coast Air Quality Management District (SCAQMD) in support of its continuing air program under section 105 of the Clean Air Act (CAA) for the calendar year 2015 is a result of non-selective reductions in expenditures. This determination, when final, will permit the SCAQMD to receive grant funding for FY2016 from the EPA under section 105 of the Clean Air Act.

DATES: Comments and/or requests for a public hearing must be received by the EPA at the address stated below by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. [EPA-R09-OAR-2016-0120] at <http://www.regulations.gov>, or via email to Lance.Gary@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once

submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**FOR FURTHER INFORMATION CONTACT**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gary Lance, EPA Region IX, Grants and Program Integration Office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105-3901; phone: (415) 972-3992, fax: (415) 947-3579 or email address at lance.gary@epa.gov

SUPPLEMENTARY INFORMATION: Section 105 of the Clean Air Act (CAA) provides grant support for the continuing air programs of eligible state, local, and tribal agencies. In accordance with 40 CFR 35.145(a), the Regional Administrator may provide air pollution control agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution. Section 105 contains two cost-sharing provisions which recipients must meet to qualify for a CAA section 105 grant. An eligible entity must meet a minimum 40% match. In addition, to remain eligible for section 105 funds, an eligible entity must continue to

meet the minimum match requirement as well as meet a maintenance of effort (MOE) requirement under section 105(c)(1) of the CAA, 42 U.S.C. 7405.

Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses. The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year, but only for the costs of recurring activities. Specifically, section 105(c) (1), 42. U.S.C. 7405(c)(1) provides that “no agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.” Pursuant to CAA section 105(c)(2), however, the EPA may still award a grant to an agency not meeting the requirements of section 105(c)(1), “if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.” These statutory requirements are repeated in the EPA’s implementing regulations at 40 CFR 35.140 through 35.148. The EPA issued additional guidance to recipients on what constitutes a nonselective reduction on September 30, 2011. In consideration of legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each Executive branch agency need be reduced in equal proportion. However, it must be clear to the EPA, from the weight of evidence, that a recipient’s CAA-related air program is not being disproportionately impacted or singled out for a reduction.

A section 105 recipient must submit a final financial status report no later than 90 days from the close of its grant period that documents all of its federal and non-federal expenditures

for the completed period. The recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary to enable the EPA to make a determination that a nonselective reduction has occurred. In order to expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction's executive branch agencies, the recipient agency itself, and the agency's air program. The recipient should identify any executive branch agencies or programs that should be excepted from comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in key areas will be needed: budget data specific to the recipient's air program, and comparative budget data between the recipient's air program, the agency containing the air program, and the other executive branch agencies. The EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements; and documentation which explains the cause of the reduction, such as legislative changes or the issuance of a new executive order.

In FY-2015, the EPA awarded the SCAQMD \$5,082,526, which represented approximately 5% of the SCAQMD budget. In FY-2016, the EPA intends to award the SCAQMD approximately \$5,039,863, which represents roughly 5% of the SCAQMD budget.

SCAQMD's final Federal Financial Report for FY-2014 indicated that SCAQMD's maintenance of effort (MOE) level was \$106,315,128. SCAQMD's final Federal Financial Report for FY-2015 indicates that SCAQMD's maintenance of effort (MOE) level was \$105,858,708. The reduced MOE is not sufficient to meet the MOE requirements under the CAA section 105 because it is not equal to or greater than the MOE for the previous fiscal year.

In order for the SCAQMD to be eligible to receive its FY-2016 CAA section 105 grant, the EPA must make a determination, (after notice and an opportunity for a public hearing), that the reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of the South Coast Air Quality Management District.

The South Coast Air Quality Management District is a single-purpose air pollution control agency whose primary source of funding is from stationary sources of emissions. It is the “unit of government for section 105 (c)(2) purposes.”

The Maintenance of Effort (MOE) level for FY-2015 is higher than the last MOE adjustment in FY 2013. Specifically, the MOE for FY-2015 is \$762,655 higher than the FY-2013 level, the last time a non-selective reduction was approved. As compared to the FY-2014 level, the FY-2015 MOE is \$456,420 or 0.43% lower.

The FY-2015 MOE was lower than the FY-2014 level due to relatively high uncollectible accounts receivable expenditures in FY-2014. Without this higher level of uncollectible accounts receivable in FY-2014, the MOE level would have been met in FY-2015.

Also, in FY 2014-15, “Other Revenue” decreased by \$10.5 million from FY 2013-14 and total revenue (Stationary Sources and Other Revenue) for this time period decreased by \$9.3 million. This unpredictable revenue decrease, combined with lower levels of Stationary Source revenues since FY-2009-10, results in SCAQMD budget reductions. This may cause fluctuations in the MOE level from year to year. Stationary Source Revenues and Other Revenue for FY-2012-13 through 2014-15 is detailed below.

Year	Stationary Sources	Other Revenue
2013	\$83,307,359	\$49,624,690
2014	\$84,341,483	\$60,438,706
2015	\$85,546,869	\$49,962,777

The request for a reset of SCAQMD's MOE meets the criteria for a non-selective reduction determination based on: 1. SCAQMD's inability to levy taxes, 2. regulated and voluntary emissions reductions, 3. agency-wide expenditure cuts, and 4. use of financial reserves to balance the budget.

Although SCAQMD receives less than 5 percent of its support from the section 105 grant, the loss of that funding would seriously impact SCAQMD's ability to carry out its clean air program.

The SCAQMD's MOE reduction resulted from a loss of revenues due to circumstances beyond its control. The EPA proposes to determine that lowering SCAQMD's FY- 2015 MOE level to \$105,858,708 meets the CAA section 105(c) (2) criteria as resulting from a non-selective reduction of expenditures.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]** on this proposal will be considered. The EPA will conduct a public hearing on this proposal only if a written request for such is received by the EPA at the address above by **[INSERT DATE 30 DAYS AFTER**

PUBLICATION IN THE FEDERAL REGISTER]. If no written request for a hearing is received, the EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Gary Lance at the above address.

Dated: May 10, 2016.

Deborah Jordan,
Acting Regional Administrator,
Region IX.